The prospect of summarizing every franchise and distribution case from August 1, 2017 through July 31, 2018 ("Reporting Period") was daunting and exciting at the same time. Fortunately, throughout the Reporting Period, there were a variety of interesting cases and developments that kept us going. We did not come across many “game changing” decisions (except perhaps with respect to no-hire clauses included in franchise agreements and some of the happenings at the NLRB), but we did summarize a number of cases in areas of the law that are still developing and impacting franchising. For example, the issue of whether a franchisor is a joint employer or a vicariously liable party continued to be litigated. Unfortunately (or, depending on your point of view, fortunately), there was not a consensus in the case law as to when a franchisor may be liable as a joint employer or under a theory of vicarious liability in relation to a franchisee’s employees. The same is true with respect to the several cases addressing when a franchisor becomes an employer of its franchisees.

Much like the joint employer cases, the conclusion that we kept arriving at as we read case after case is that franchise and distribution law, generally, can still provide attorneys with a wide open playing field of advocacy. At times, one might wonder if the law is in a state of post-modernity, as two courts looking at the same or similar set of facts can reach two contradictory conclusions. This is not to say that franchise attorneys have no control over an outcome; in fact, to the contrary, the way in which an attorney presents the facts and law can have a significant bearing on the outcome of a particular case. As you will see, some courts bucked trends to reach a conclusion—at least arguably—based on the severity of the facts. Other courts read implied language into contracts in order to achieve results with public policy concerns in mind. Still others called precedent into question but reached a result in line with such precedent, knowing that they were bound to do so—a favorite involved a description of the outcome in the 1967 Supreme Court *Prima Paint* case “odd” or “fantastic.” These cases made for
interesting reads and we hope you find the summaries equally interesting.

We utilized CCH’s Business Franchise Guide and Westlaw as our sources this year, with an occasional case pulled directly from a court’s docket where not available in any database. We also would like to note that while we attempted to provide thorough explanations of each case, we could not include every detail, nuance, issue or claim without making this a multi-volume set of books. Thus, while we hope that these summaries offer the reader guidance and substance with respect to each topic and decision addressed, it is important that the reader ultimately reads a case in full before relying on it as persuasive or precedential. Additionally, many decisions summarized in this book have been appealed or are part of ongoing litigation. As a result, the summaries may not represent the final word on the merits or substance in any particular case.

Of course, we read many cases with traditional and expected fact patterns and results. For example, there were cases addressing personal jurisdiction, motions to compel arbitration, breach of contract, and venue disputes. Even within these more “traditional” cases, however, there are nuances and the occasional extraordinary fact pattern or result.

Some other interesting highlights include:

- It continues to be critically important to show specifics when it comes to trade secret claims. Trade secret cases appear not only in the sub-chapter on Misappropriation of Trade Secrets, but also in the sub-chapter on Injunctive Relief. General assertions about the franchisor’s “system” being proprietary and confidential may not be sufficient, though there are of course exceptions. A party asserting a claim for misappropriation of trade secrets should aim to sufficiently identify the alleged trade secret, as well as why and how it is actually a trade secret.

- There has been no death of arbitration—mandatory arbitration provisions continue to be enforced. Nonetheless, depending on the specific language in the arbitration provision and the claims alleged, there may still be an opportunity to defeat a motion to compel arbitration.

- In analyzing relief when a franchisor seeks to enjoin a former franchisee from operating a competitive business, some courts seemed to infer irreparable harm without much, if any, analysis on this point. But we saw other examples where courts dug
deeper into this question to determine whether the harm can instead be remedied by a monetary award.

- The European Union’s General Data Protection Regulation (GDPR) creates a number of additional concerns for franchisors and franchisees when it comes to collecting and using customer information. GDPR’s scope is quite broad and companies are still trying to figure out what is necessary to comply. The summary of GDPR in this book should give practitioners a good jumping off point for further analysis of GDPR’s requirements and means of compliance.

- Personal jurisdiction standards continue to be developed. While the Court in *Bristol-Meyers Squibb Co. v. Superior Court of California*, 137 S.Ct. 1773, 1783 (2017) stated that the holding resulted from their “straightforward application . . . of settled principles of personal jurisdiction,” courts have placed less significance on a defendant’s contacts with a plaintiff in a particular forum state and more on the defendant’s contacts with the forum state itself.

We learned a lot writing this book and we hope that the reader finds it to be practical, informative, and useful for the coming year and beyond.